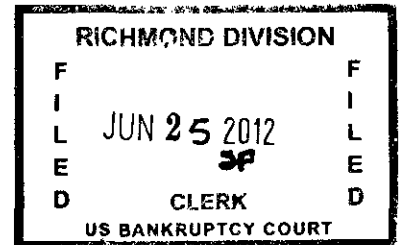


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



In re: : Chapter 11
: :
CIRCUIT CITY STORES, INC., et al., : Case No. 08-35653-KRH
: :
Debtors. : (Jointly Administered)
: :
: :

**STATEMENT OF MITIGATION AND
DISPUTE OF PROPOSED REJECTION OF CLAIM**

Comes now Coldwater Development Company LLC and for its Statement of Mitigation And Dispute of Rejection of Claim, respectfully states as follows:

1. Coldwater Development Company LLC ("Coldwater") entered into a lease, on May 5, 1998, with Circuit City Stores, Inc. ("Debtor"), for certain retail property in Fort Wayne, Indiana.

2. The subject lease expires on January 31, 2020.

3. Coldwater filed its Proof of Claim, Claim No. 7593, in the sum of \$353,013.44, which is the accurate amount that would be due under the lease from Debtor to Coldwater during the period that is properly recoverable under the U.S. Bankruptcy Code. Coldwater attached a copy of the lease and other supporting documentation to its claim establishing the validity and amount of Claim No. 7593.

4. A proof of claim "constitutes *prima facie* evidence of the validity and amount of the claim". FED R. BANKR. P. 3001(f); *see In re Fitzgerald*, 2008 Bankr. LEXIS 3579, *4 (Bankr. W.D. Va. 2008) ("a proof of claim is presumed to be *prima facie* valid"). The burden of proof therefore "shifts to the objector to come forth with evidence sufficient to rebut the *prima facie* case." *See United States v. Johnson (In re Johnson)*, 2000 U.S. Dist. LEXIS 5649 *17 (N.D. Ga. March 30, 2000) (citing *Placid Oil*), 988 F. 2d 554, 557 (5th Cir. 1993)).

5. "If the proof of claim is supported by the required documentation, the presumption of validity may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal." *In re Falwell*, 434 B.R. 779, 784 (Bankr. W.D. Va. 2009). In order to prevail,

the Liquidating Trust must present evidence "sufficient to demonstrate the existence of a true dispute and must have probative force equal to the contents of the claim." *In re Falwell*, 434 B.R. at 784 (citing 9 COLIER ON BANKRUPTCY, "Proof of Claim," ¶ 3001.09[2] (15th ed. Rev.)). The Liquidating Trust, however, has offered no evidence supporting the objection or reduction of Claim No. 7593 that overcomes the presumption of the validity of Claim No. 7593.

6. Debtor ceased business operations in the subject property and thereafter Coldwater posted "For Lease" signs on the property. Coldwater's contact information is also displayed on the pylon sign at the shopping center so that potential tenants may inquire about available space within the shopping center, including the space previously occupied by Debtor. Coldwater also has a double sided 4 foot by 8 foot yard sign along the highway in front of the subject property. Photographs of such signage are attached hereto, marked Exhibit A and incorporated herein by reference.

7. Coldwater also shows that the subject property is available for lease on its web site, which can be found at www.sandordev.com. A copy of the information displayed regarding this property is attached hereto, marked Exhibit B and incorporated herein by reference.

8. Coldwater also has full-time leasing representatives assigned to the subject property who make telephone calls and in-person presentations such as at International Council of Shopping Center state, regional, national and annual conferences to market and lease the subject property. Coldwater has diligently and actively sought a replacement tenant.

9. The Liquidating Trustee may contact the following person to discuss Coldwater's mitigation efforts:

William T. Niemier
Sandor Development Company
10689 N. Pennsylvania Street, Suite 100
Indianapolis, IN 46280

10. The actions described herein by Coldwater have been taken in efforts to mitigate the damages it incurred as a result of Debtor ceasing to conduct business at the subject property and are commercially reasonable actions on behalf of a landlord with vacant property.

11. An Affidavit of William Moyer is attached hereto, marked Exhibit C and incorporated herein by reference. Said Affidavit further describes the actions taken by Coldwater to mitigate its damages.

12. As a result of Coldwater's marketing and mitigation efforts, the subject property has been partially leased. Circuit City is entitled to a credit towards the amount due under the lease in the sum of \$317,434.74. The amount due from Circuit City under its lease with Coldwater through the expiration thereof is \$2,063,944.53. After application of such credit, Circuit City still owes Coldwater the sum of \$1,746,509.79. As a lease rejection claim, Coldwater is entitled to receive 15% of this amount as a general unsecured claim in Circuit City's bankruptcy. Therefore, Coldwater's claim, Claim No. 7593, should be reduced as a result of payments received from a partial subsequent tenant, to the sum of \$261,976.46.

13. The Liquidating Trustee has submitted no evidence to support its position that Coldwater has failed to mitigate its damages, has failed to meet its burden of presenting sufficient evidence that a legitimate dispute exists regarding Claim No. 7593, and its Objection to Coldwater's claim should be overruled and denied.

WHEREFORE, Coldwater Development Company LLC respectfully requests that the Court deny Debtor's objection to its claim, that Coldwater's claim against Debtor be paid as a general unsecured claim in the full amount of \$261,976.46 and for all other relief just and proper in the premises.

Respectfully submitted,
Coldwater Development Company LLC

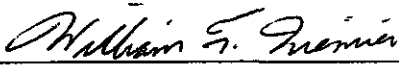
By: William T. Niemier
William T. Niemier

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Mitigation And Dispute of Rejection of Claim has been served, on this 22nd day of June, 2012, by Federal Express next day delivery, costs prepaid, upon the following:

Jeffery N. Pomerantz
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Boulevard
Los Angeles, CA 90067-4100

Lynn L. Tavenner
TAVENNER & BERAN, PLC
20 N. Eighth Street, 2nd Floor
Richmond, VA 23219



William T. Niemier

William T. Niemier
Coldwater Development Company LLC
10689 N. Pennsylvania Street, Suite 100
Indianapolis, IN 46280
(317) 925-9011

Exhibit A
Page 1 of 3

Exhibit A
Page 2 of 3

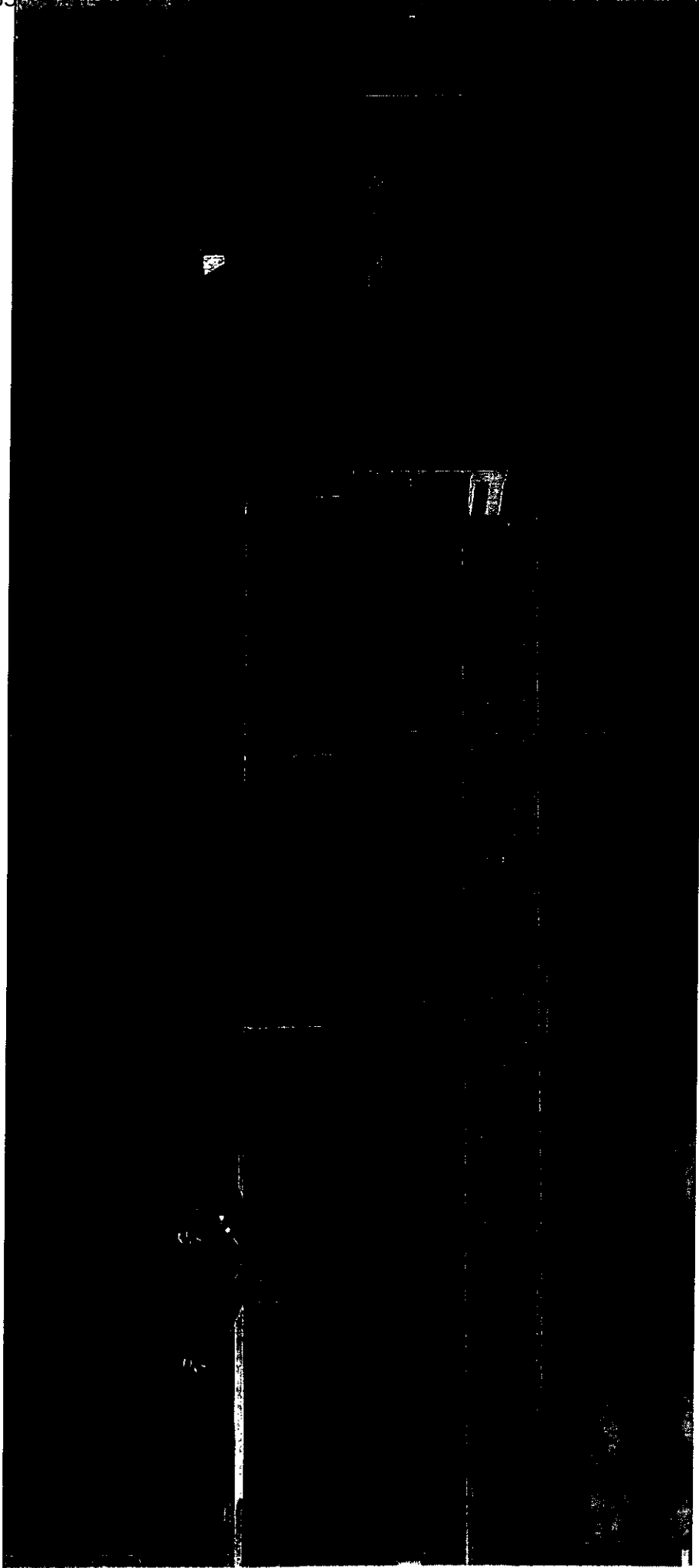


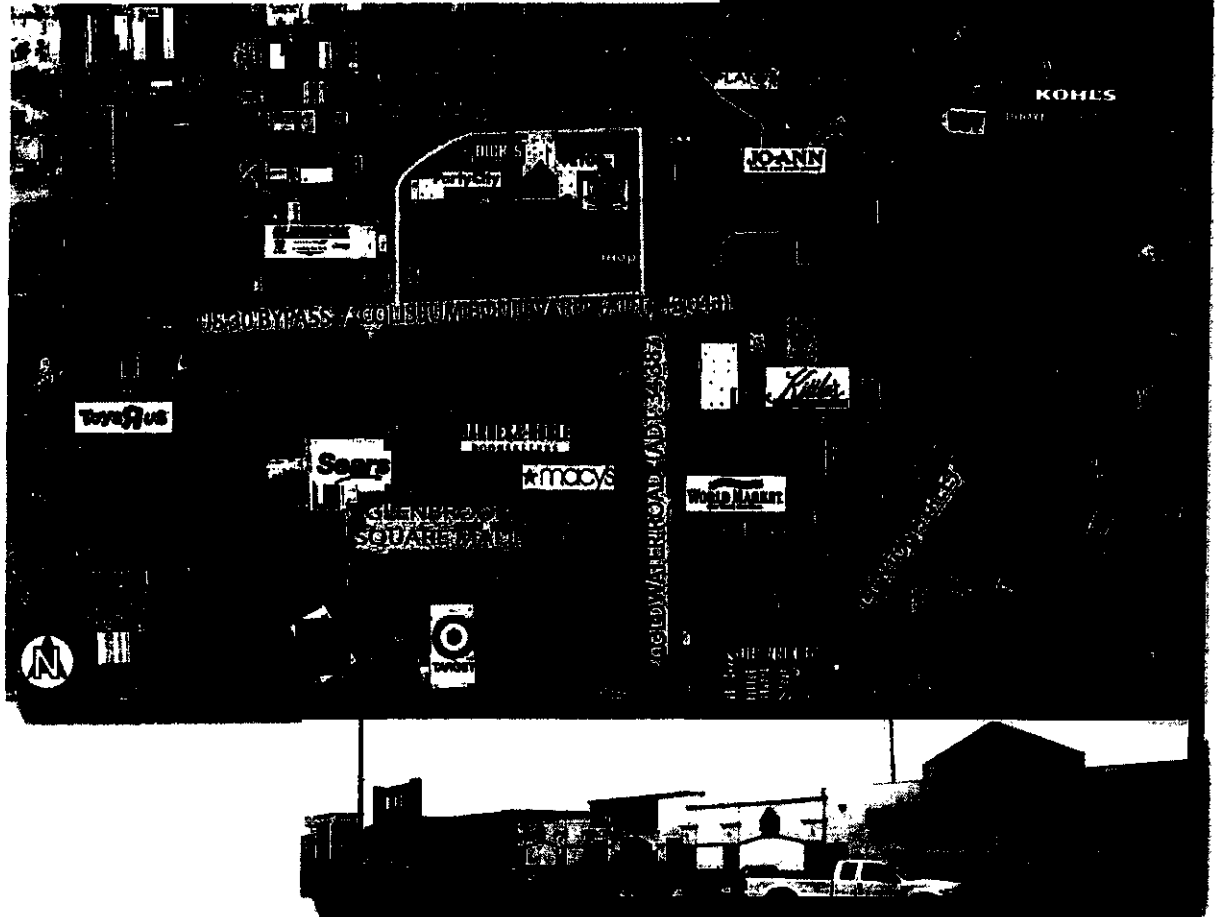
Exhibit A
Page 3 of 3

GLENBROOK PLAZA

FORT WAYNE

309 E. Coliseum Blvd
Fort Wayne, IN 46805

RETAIL SPACE
FOR LEASE
1,500 - 3,600 SF

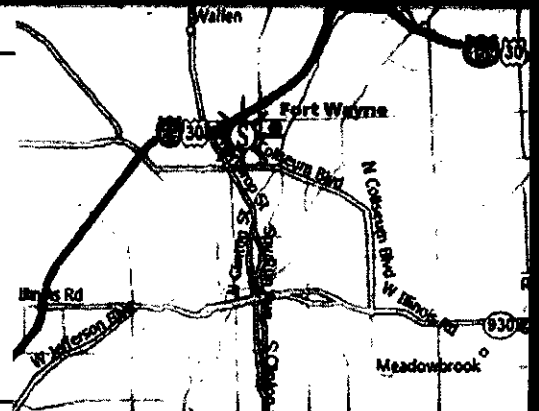


KEY FEATURES

- Directly across the street from Glenbrook Mall, Indiana's largest regional mall
- Trade area has an 8 county, 100 mile draw
- Highly visible and easily accessible from Coliseum Boulevard (ADT: 43,043) & Coldwater Road - US 27 (ADT: 34,387)
- Shopping center co-tenants include Dick's Sporting Goods, PETCO, Ashley Furniture, Party City, Starbucks, Chili's and more

DEMOGRAPHICS

	1 mile	5 mile	5 mile
Population	5,808	73,079	167,521
Households	2,490	30,445	66,844
Average Household Income	\$38,949	\$44,323	\$50,113
Median Household Income	\$36,173	\$40,190	\$44,931



Jeff Roberts

www.sandordev.com

 **Sandor** *Exhibit B*
Page 1 of 2

SITE DATA

GLENBROOK PLAZA			
UNIT	TENANT	DIMS.	SQ. FT.
315	PETCO	IRR.	15,000
311	ASHLEY FURNITURE	IRR.	45,982
309	DICK'S SPORTING GOODS	200 X 250	50,000
285	HIBACHI SUSHI & BUFFET	78 X IRR.	15,898
283	PARTY CITY	80 X 157.69	12,615
281	AVAILABLE	15 X 100	1,500
279	AVAILABLE	21 X 100	2,100
273	RENT-A-CENTER	35 X 100	3,500
267	CITI FINANCIAL	20 X 100	2,000
263	AVAILABLE	30 X 100	3,000
257	LESLIE'S POOL SUPPLIES	40 X 100	4,000

OUTLOTS			
UNIT	TENANT	DIMS.	SQ. FT.
301	STARBUCKS	IRR.	1,850
4411	WU'S SZECHWIN (CHINESE CUISINE)	58 X 70	4,060
4415	SPORT CLIPS	17 X 70	1,190
4419-23	AVAILABLE (WILL SUBDIVIDE)	45 X 70	3,150
4501	TUFFY	IRR.	3,840
	GLENBROOK DODGE	-	-
	MCDONALD'S	-	-

SITE MAP



GRAPHIC IS FOR ILLUSTRATION PURPOSES ONLY.

www.sandordex.com

AFFIDAVIT OF WILLIAM MOYER

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

I, William Moyer, being first duly sworn upon my oath and based upon my personal knowledge, state the following:

1. I am employed as the Director of Facility Management at Sandor Development Company.

2. Coldwater Development Company LLC ("Coldwater") is an entity owned, managed, and marketed by Sandor Development Company.

3. Coldwater is the owner of the Glenbrook Plaza Shopping Center in Fort Wayne, Indiana, a portion of which was leased to Circuit City Stores, Inc. ("Circuit City").

4. Circuit City ceased business operations at this property and thereafter Coldwater posted "For Lease" signs on the property. Coldwater's contact information is also displayed on the pylon sign at the shopping center so that potential tenants may inquire about available space within the shopping center, including the space previously occupied by Circuit City. Coldwater also has a double sided 4 foot by 8 foot yard sign along the highway in front of the subject property.

5. Coldwater also shows that the subject property is available for lease on its web site, which can be found at www.sandordev.com.

6. Coldwater also has full-time leasing representatives assigned to the subject property who make telephone calls and in-person presentations such as at International Council of Shopping Center state, regional, national and annual conferences to market and lease the subject property. Coldwater has diligently and actively sought a replacement tenant for this property.

7. The above actions by Coldwater have been taken to mitigate the damages it incurred as a result of Circuit City ceasing to conduct business at the subject property and are commercially reasonable actions on behalf of a landlord with vacant property.

8. As a result of Coldwater's marketing and mitigation efforts, the subject property has been partially leased. Circuit City is entitled to a credit towards the amount due under the lease in the sum of \$317,434.74. The amount due from Circuit City under its lease with Coldwater through the expiration thereof is \$2,063,944.53. After application of such credit, Circuit City still owes Coldwater the sum of \$1,746,509.79.

Exhibit C

Page 1 of 2

As a lease rejection claim, Coldwater is entitled to receive 15% of this amount as a general unsecured claim in Circuit City's bankruptcy. Therefore, Coldwater's claim, Claim No. 7593, should be reduced as a result of payments received from a partial subsequent tenant, to the sum of \$261,976.46.

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT.

William Moyer
William Moyer

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared William Moyer, an employee of Sandor Development Company, who acknowledged the execution of the foregoing Affidavit as his free and voluntary act.

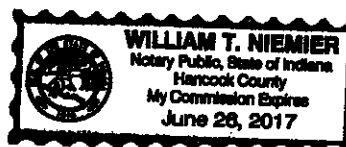
WITNESS my hand and Notarial Seal, this 22nd day of June, 2012.

William T. Niemier
Signature, Notary Public

William T. Niemier
Printed, Notary Public

My Commission Expires: 6-26-2017

County of Residence: Hancock





June 22, 2012

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street, Room 4000
Richmond, VA 23219

RE: Circuit City Stores, Inc. Bankruptcy
Case No. 08-35653-KRH

Dear Clerk:

Enclosed please find the original and several copies of a Statement of Mitigation And Dispute of Rejection of Claim for filing in the above case. Please return filed marked copies in the provided envelope.

Thank you for your assistance and please contact me at (317) 925-9011 if you have any questions or need additional information.

Very truly,

William T. Niemier
Coldwater Development Company, LLC

Enclosures:

cc: Jeffery N. Pomerantz, PACHULSKI STANG ZIEHL & JONES LLP
Lynn L. Tavenner, TAVENNER & BERAN, PLC

10689 N. Pennsylvania St., Suite 100, Indianapolis, IN 46280

p. 317.925.9011 f. 317.927.0723

toll free: 877.925.9011

www.sandordev.com